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Fourth Consultation
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ISSUE NO. 1: UNIDO MODEL FORMS OF
CONTRACT FOR THE CONSTRUCTION
OF A FERTILIZER PLANT

Issue paper *

prepared by
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1. BACKGROUND

The First Consultation on the Fertilizer Industry recommended that UNIDO examines contract procedures to ensure the successful construction and operation of fertilizer plants. A Technical Seminar on Contracting Methods and Insurance Schemes for Fertilizer and Chemical Process Industries was convened at Lahore, Pakistan in November 1977 (report ID/WG.259/26/Rev.2), to discuss the issue.

The Seminar concluded that UNIDO should prepare four types of model contracts, namely Turnkey Lump Sum, Semi-Turnkey, Cost Reimbursable and Supply of Know-how and Engineering Services.

The Second Consultation on the Fertilizer Industry considered the drafts of all the Model Contracts but agreed to examine only the draft Cost Reimbursable Contract. It recommended that UNIDO should continue to work on preparing the four types of Model Forms of Contract and present final drafts at the next Consultation Meeting.

The Third Consultation on the Fertilizer Industry examined the revised drafts of two Model Contracts, namely Turnkey and Cost Reimbursable. It recommended that UNIDO should convene an expert group meeting to complete examination and finalize both Model Contracts. The expert group meeting was convened in Vienna and both Model Contracts were finalized in May 1981.

In order to fully meet the recommendation of the Second Consultation, UNIDO prepared second drafts of the remaining two Model Contracts, namely Semi-Turnkey Contract and Licensing and Engineering Services Agreement. These draft Model Contracts are being presented to the Fourth Consultation for consideration.

2. THE DOCUMENTS

A. Second draft of the UNIDO Model Form of Semi-Turnkey Contract for the Construction of a Fertilizer Plant, including Guidelines and Technical Annexures (UNIDO/PC.74)

This Model Contract was drafted taking into account the negotiated positions of purchasers and contractors reflected in the finalized Turnkey and Cost Reimbursable Model Contracts. The obligations, liabilities and compensations of the parties in the Semi-Turnkey Contract lay in-between and largely follow the terms of the other two Model Contracts.

B. Second draft of the UNIDO Model Form of Licensing and Engineering Services Agreement for the Construction of a Fertilizer Plant, including Guidelines and Technical Annexures (UNIDO/PC.73)

In preparing this Model Contract, the Supply of Know-how and Engineering Services, the discussions at the Second Consultation on the Petrochemical Industry in June 1981 were noted, which recommended the use of Licensing Agreement instead of Supply of Know-how Contract in order to conform with current practice. This recommendation was also adopted for the fertilizer industry.

Licensing agreements are customarily much simpler documents than engineering contracts. So far, UNIDO has finalized only engineering contracts in the fertilizer industry whilst a licensing agreement was already negotiated in the petrochemical industry. Therefore, the second draft of the Licensing and Engineering Services Agreement for the Construction of a Fertilizer Plant was prepared taking into account the negotiated positions of licensors and licensees reflected in a similar Licensing Agreement on the petrochemical industry, and the relevant aspects of the two finalized Model Contracts on the fertilizer industry.

The Semi-Turnkey Contract and the Licensing and Engineering Services Agreement rearrange the balance between obligations, liabilities and financial compensations of traditional contracts, and custom them to the special requirements and problems of most developing countries. In particular,

fertilizer plants need a higher built-in safety and reliability which enables them to perform at capacity and which warrants a commensurate liability and financial compensation.

The Guidelines inform, particularly purchasers and licensees in developing countries, of the conditions and obligations they shall be entering into when choosing a particular Model Contract, and the safeguards and guarantees that should be sought accordingly in an actual negotiation.

3. THE ISSUE

The originality and value of these Model Contracts as instruments for negotiation is due to the fact that they embody the result of a negotiation between experienced parties.

However, the Model Contracts do not replace the parties' judgement or contractual skills. Rather they provide a basis from which a fair balance between mutual obligations, liabilities and compensations could be achieved, according to the requirement of most developing countries.

Participants at the Fourth Consultation are thus invited to examine the content of the two Model Contracts presented and advise UNIDO on steps to be taken to finalize both documents.